89-858

No.

Supreme Court, U.S.
FILED
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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

WILLIAM P. HAPANIEWSKI and EDWARD JANSKI,

Petitioners,

v.

CITY OF CHICAGO HEIGHTS, a municipal corporation, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Is the federal court of appeals, by affirming the district court's decisions to give *res judicata* effect to a state court judgment, in direct conflict with the Supreme Court of the United States, which had vacated such state court judgment prior to the district court decisions?

2. Does the federal court of appeals, in affirming the district court's decisions to give *res judicata* effect to a state court judgment, fail to give full faith and credit, as required by the Full Faith and Credit Act, 28 U.S.C. § 1738, to the Illinois appellate court's decision which also vacated such state court judgment on remand from the Supreme Court of the United States?

3. Are the Rule 11 fines and sanctions of $1,500 imposed on William Hapaniewski and $1,500 on his attorney, Edward Janski, by the district court, *sua sponte* and *ex parte*, and affirmed by the federal court of appeals, justified on the grounds stated by such district court and federal court of appeals, since both the district court and the federal court of appeals substantially relied on the *res judicata* effect of a state court judgment in finding that such fines and sanctions were justified, even though such state court judgment had been vacated by the Supreme Court of the United States and by the Illinois appellate court on remand from the Supreme Court of the United States?

4. Is it proper for a circuit judge of a federal court of appeals to sit in review of a case which had been assigned to such circuit judge when he was a district court judge?

LIST OF PARTIES *

1. William Hapaniewski, Appellant in the Court of Appeals and Petitioner herein.

2. Edward Janski, Appellant in the Court of Appeals and Petitioner herein.

3. City of Chicago Heights, a municipal corporation, named as Appellee in the Court of Appeals and as Respondent herein.

**4. The Circuit Court of Cook County, Illinois, named as Appellee in the Court of Appeals, and as Respondent herein.

**5. Duff, Brian B., as Judge and individually, named as Appellee in the Court of Appeals and as Respondent herein.

**6. The Appellate Court of Illinois, First District, Fifth Division, named as Appellee in the Court of Appeals and as Respondent herein.

**7. Mejda, James A., as Judge and individually, named as Appellee in the Court of Appeals and as Respondent herein.

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* By court rule of the Court of Appeals for the Seventh Circuit, the caption of the case in the district court is required to be the caption of the case on appeal to the Court of Appeals for the Seventh Circuit. Edward Janski, attorney for plaintiff, joined in the appeal to appeal the Rule 11 fines and sanctions imposed on him as plaintiff's attorney.

** Petitioners believe that such Respondent has no interest in the outcome of the petition herein, and petitioners have so notified the Clerk of the Supreme Court of the United States and all Respondents by letter, pursuant to Rule 19(6).

**8. Sullivan, John J., as Judge and individually, named as Appellee in the Court of Appeals and as Respondent herein.

**9. Pincham, Eugene R., as Judge and individually, named as Appellee in the Court of Appeals and as Respondent herein.

**10. Murray, James C., as Judge and individually, named as Appellee in the Court of Appeals and as Respondent herein.

11. United States Court of Appeals for the Seventh Circuit, Respondent herein.

12. United States District Court for the Northern District of Indiana—Hammond Division, Respondent herein.

** Petitioners believe that such Respondent has no interest in the outcome of the petition herein, and petitioners have so notified the Clerk of the Supreme Court of the United States and all Respondents by letter, pursuant to Rule 19(6).

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IN THE

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WILLIAM P. HAPANIEWSKI
and EDWARD JANSKI,

Petitioners,

v.

CITY OF CHICAGO HEIGHTS,
a municipal corporation, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

William Hapaniewski and Edward Janski, the petitioners herein, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above-entitled case on August 25, 1989.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Seventh Circuit rendered on August 25, 1989, is reported in 883 F.2d 576 (7th Cir. 1989), and is printed in Appendix A hereto. The Order and Opinion of the United States District Court for the Northern District of Indiana—Hammond Division rendered on May 18, 1988, is unreported, and is printed in Appendix B hereto. The Opinion of the United States District Court for the Northern District of Indiana—Hammond Division rendered on April 18, 1987, is reported in 684 F.Supp. 1011 (N.D. Ind. 1987), and is printed in Appendix C hereto.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on August 25, 1989. No petition for reconsideration was filed in the United States Court of Appeals. Petitioners invoke the jurisdiction of this Court under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

This case involves the following Constitutional provisions, statutes, and regulations, the text of each of which is set forth in Appendix G, *infra*:

Full Faith and Credit Clause, United States Constitution, Article IV, Section 1;

Due Process Clause of the Fifth Amendment to the United States Constitution;

28 U.S.C. § 1406(a), which deals with transfer of venue;

The Full Faith and Credit Act, 28 U.S.C. § 1738; and,

Rule 11 of the Federal Rules of Civil Procedure for the United States District Courts.

STATEMENT OF THE CASE

Initially, on April 13, 1981, Hapaniewski filed suit against the City of Chicago Heights in the Circuit Court of Cook County, Illinois, claiming violations under state and federal statutory law (42 U.S.C. § 1983) and under the state and federal constitutions in connection with the demolition and destruction of Hapaniewski's building by the City of Chicago Heights without due process of law.

On the motion of the City of Chicago Heights, the Illinois trial court dismissed Hapaniewski's claims as time-barred by a two-year statute of limitations. The Illinois Appellate Court affirmed the trial court on August 23,

1985. Hapaniewski petitioned the Illinois Supreme Court and was denied leave to appeal and was denied a rehearing on his petition for leave to appeal on January 13, 1987.

On February 12, 1987, Hapaniewski filed a complaint in federal district court alleging the same violations claimed in the state court action but adding two additional counts against the judges in the state trial and appellate courts for a declaratory judgment and injunctive relief. The complaint recited in its caption "IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS—EASTERN DIVISION"; however, inadvertently, the complaint was filed in the United States District Court for Northern Indiana—Hammond Division.

Separately, on April 13, 1987, Hapaniewski filed his petition to the Supreme Court of the United States for a writ of certiorari to the Illinois Appellate Court to obtain review of the Illinois Appellate Court's decision affirming the trial court's dismissal based on the two-year statute of limitations bar to Hapaniewski's claims under 42 U.S.C. § 1983.

The Supreme Court of the United States, on October 5, 1987, granted the writ of certiorari to the Illinois Appellate Court, and vacated the judgment of the Illinois Appellate Court. *Hapaniewski v. City of Chicago Heights*, ____ U.S. ____, 108 S.Ct. 53 (No. 86-1851) (1987). In addition, the Supreme Court of the United States remanded the case to the Illinois Appellate Court for further consideration. (See Appendix D.)

Pursuant to such remand, the Illinois Appellate Court on May 6, 1988, vacated its prior 1985 judgment after determining that there was clear precedent in Illinois establishing a five-year statute of limitations for civil rights actions upon which Hapaniewski could reasonably

rely, and remanded the case to the trial court with directions to apply the five-year statute to Hapaniewski's civil rights claims. *Hapeniewski (sic) v. City of Chicago Heights*, 169 Ill. App.3d 945, 120 Ill.Dec. 584, 524 N.E.2d 614 (App. Ct. 1988). (See Appendix E.)

In the meantime, the action inadvertently filed in United States District Court for the Northern District of Indiana—Hammond Division, was still pending, and there was no way for valid service of process to issue from the district court in Indiana because all of Hapaniewski's claims arose in Illinois and all defendants resided in Illinois.

On July 28, 1987, the clerk of the Indiana district court gave notice to Hapaniewski to show good cause why the case there should not be dismissed for failure to have process issued and service made within 120 days of the filing of the complaint.

On August 5, 1987, Edward Janski, attorney for Hapaniewski, filed his response to such notice from the clerk of the Indiana district court. On August 14, 1987, the Indiana district court entered an Order stating, among other things, that Hapaniewski must perfect service of process by September 16, 1987.

On September 14, 1987, Edward Janski, as attorney for Hapaniewski, filed plaintiff's motion to transfer venue to the United States District Court for the Northern District of Illinois - Eastern Division, and to extend time to perfect service of process. Under local practice and court rule, there are no hearings on motions before the United States District Court for the Northern District of Indiana - Hammond Division unless the district court grants leave for a hearing on a motion for extraordinary reasons, upon written request.

On April 18, 1988, the Indiana district court, *sua sponte* and *ex parte* without notice to Hapaniewski or Janski, and without a hearing, entered an Order whereby the motion to transfer venue and to extend time to perfect service of process was denied, whereby the case was dismissed, and whereby fines and sanctions of $1,500 on Hapaniewski and $1,500 on Janski were imposed pursuant to Rule 11. (See Appendix C.) Judgment was entered on such Order on April 20, 1988.

On May 18, 1988, Hapaniewski and Janski filed their Consolidated Emergency Motions: To Vacate Order, Judgment, and Fines; To Reconsider Motion to Transfer Venue and To Extend Time to Perfect Service of Process; and, In The Alternative, Motion for Application for a Stay of Order, Judgment, and Fines, Pending Appeal. Without any hearing, the Indiana district court denied such Consolidated Emergency Motions in an Order and Opinion rendered on May 18, 1988.

In such Consolidated Motions, Hapaniewski and Janski had advised the Indiana district court that the Illinois state court judgment had been vacated by the Supreme Court of the United States on October 5, 1987, and also by the Illinois Appellate Court on May 6, 1988.

On May 19, 1988, Hapaniewski and Janski filed their Notice of Appeal to appeal to the United States Court of Appeals for the Seventh Circuit. Hapaniewski and Janski were the only parties of record to the appeal.

After submitting their brief on the appeal, Hapaniewski and Janski were advised by the Court of Appeals for the Seventh Circuit that it was considering the appeal on the brief and the record, without any oral argument. In response, Hapaniewski and Janski filed a request for oral argument, but the request was denied.

Under court rule and practice of the Court of Appeals for the Seventh Circuit, the parties do not learn of the identity of the circuit judges sitting on the panel for the appeal until the time of oral argument, and if there is no oral argument the parties do not learn of the identity of the circuit judges sitting on the panel for the appeal until the appeal decision is issued and published to them.

In this case, Hapaniewski and Janski did not learn that Circuit Judge Michael Kanne was on the panel hearing their appeal until after the Court of Appeals' Judgment and Opinion were rendered on August 25, 1989. (See Appendix A.)

Circuit Judge Michael Kanne had been a district court judge with the United States District Court for the Northern District of Indiana—Hammond Division, and during the pendency of this case in the Indiana district court he was appointed and became a circuit judge of the United States Court of Appeals for the Seventh Circuit, and Judge Rudy Lozano was appointed and became a district court judge of the United States District Court for the Northern District of Indiana to fill the vacancy left by Circuit Judge Kanne.

From February 12, 1987, the time Hapaniewski inadvertently filed his complaint in the Indiana district court, to April 18, 1988, the date the General Order assigning the case to Judge Rudy Lozano was entered by the clerk of the Indiana district court, the case in the Indiana district court was officially assigned to Judge Michael Kanne. (See Appendix F.)

Therefore, it appears on record that Judge Michael Kanne had the case in the district court until April 18, 1988, the same date Judge Rudy Lozano issued the Judgment and Opinion denying Hapaniewski's motion for transfer of

venue and to extend time for service of process, and imposing fines and sanctions on Hapaniewski and Janski. And, it appears on record that Judge Michael Kanne, the same individual to whom the district court case had been assigned, also was on the panel in the Court of Appeals which reviewed the district court Judgment and Opinion of April 18, 1988. (See Appendix A.)

REASONS FOR GRANTING THE WRIT

This is a case of first impression. The Court of Appeals acknowledges that the state court judgment which the district court gives *res judicata* effect was vacated by the Supreme Court of the United States and was vacated by the Illinois Appellate Court. Nevertheless, the Court of Appeals agreed with the district court that Hapaniewski and Janski should be sanctioned under Rule 11 for relitigating in federal court Hapaniewski's claims made in the state court proceedings for which the vacated state court judgment was made.

Further, the Court of Appeals stated that it was improper for Hapaniewski and Janski to persist in the federal litigation while the state court action was still in progress at the Supreme Court level, and that Hapaniewski was bound by his decision to litigate in state court. (Appendix A, at A8-A9.)

The district court, in its May 18, 1988 Order reviewing the earlier April 18, 1988 Judgment and Order, had stated that "[t]he Supreme Court's grant of *cert.* in no way effects this Court's April 18, 1988 Order . . .". (Appendix B, at B4-B5.)

But, certainly, both the federal courts and state courts have concurrent jurisdiction over Section 1983 claims. The decision in *Mitchum v. Foster*, 407 U.S. 225, 92 S.Ct. 2151, 32 L.Ed.2d 705 (1972) expressly contemplated that proceedings would be ongoing in both the federal court and the state court. See also *Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908), and *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), and *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 84 S.Ct. 461, 11 L.Ed.2d 440 (1964).

Ordinarily, where suits are brought upon the same claim in both the state court and the federal court, each suit may proceed without interference. 19 FEDERAL PROCEDURE, LAWYERS EDITION, § 47:103, at 508 (1981).

To ignore such concurrent jurisdiction is to also ignore the long, evolving history of the Abstention Doctrine in federal law, by which the federal courts do not abdicate their jurisdiction to the state courts, but only postpone its exercise.

The Court of Appeals states that it recognizes that the state court judgment was vacated, but in actuality it continues to give *res judicata* effect to the vacated state court judgment when it agrees with the district court that it was improper for Hapaniewski and Janski to persist in the federal litigation while the state action was still in progress at the Supreme Court level.

A vacated judgment is void *ab initio*, as if it never existed, and returns the parties to the same status they had before the vacated judgment was entered.

Res judicata principles of the rendering state control the preclusive effect given to a judgment. *Marrese v. American Academy of Orthopedic Surgeons*, 470 U.S. 373, 380, 105 S.Ct. 1327, 1332, 84 L.Ed.2d 274 (1985). Hence,

Illinois law controls the preclusive effect of the Illinois judgment vacated by the Supreme Court of the United States and by the Illinois Appellate Court. Under Illinois law, there is no preclusive effect given to a vacated judgment. *Wigoda v. Cousins*, 14 Ill.App.3d 460, 302 N.E.2d 614 (App. Ct. 1973).

In short, the Court of Appeals, in agreeing with the district court that it was improper for Hapaniewski to relitigate in a federal forum his state court claims, was giving preclusive effect to the vacated state court judgment. This is in direct conflict with the decision of the Supreme Court of the United States to vacate the state court judgment, and fails to give full faith and credit to the Illinois Appellate judgment to vacate the prior state court judgment, as required by the Full Faith and Credit Act, 28 U.S.C. § 1738.

If the fines and sanctions imposed on Hapaniewski and on Janski under Rule 11 are being imposed for relitigating in federal court Hapaniewski's state court claims, then such fines and sanctions are also unjustified and unwarranted.

But, if the fines and sanctions are imposed for the filing of Hapaniewski's complaint in the Indiana district court, then the record fails to reveal any finding justifying such sanctions and fines. The mere filing in the wrong forum should not trigger sanctions automatically, because parties have the right to seek a transfer of venue under 28 U.S.C. § 1406(a), and the imposition of fines and sanctions for exercising such right nullifies such law enacted by Congress, which a court may not do except on constitutional grounds.

If the fines and sanctions were imposed for failing to effectuate service of process or dismiss the action when

service of process could not be had, as the Court of Appeals has stated, then again the Court of Appeals has nullified the right to seek a transfer under 28 U.S.C. § 1406(a), because one of the valid reasons a party seeks a transfer of venue is because the party cannot effectuate service of process from the improper forum. *Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 82 S.Ct. 913, 8 L.Ed.2d 39 (1962); *Dubin v. United States*, 380 F.2d 813 (5th Cir. 1967); 15 WRIGHT, MILLER and COOPER, Federal Practice and Procedure, *Proper Venue or Dismissal* § 3827 *et seq.* (2nd Ed. 1986). To require Hapaniewski and Janski to dismiss the suit when service of process could not issue out of the Indiana district court to obtain jurisdiction over the Illinois defendants named in the suit, and then to sanction them for failing to dismiss the action, is to deprive Hapaniewski and Janski of due process of law under the Fifth Amendment to the United States Constitution because this penalizes them for merely acting on their right to seek a transfer of venue under 28 U.S.C. § 1406(a).

Further, to impose such fines and sanctions *ex parte* without notice and without a hearing deprived Hapaniewski and Janski due process of law under the Fifth Amendment of the United States Constitution. There should have been notice and a hearing.

Under these circumstances, Rule 11 fines and sanctions were not justified against Hapaniewsi and Janski. Further, the amount of the fines and sanctions, $1,500 on Hapaniewski and $1,500 on Janski, is excessive and bears no relation to any costs or damages, since no other party was of record. There were no costs or damages to any other party.

Lastly, the decision and opinion of the Court of Appeals is tainted with the appearance of impropriety in that

Judge Kanne sat on the Court of Appeals panel reviewing the decision of the district court in this case, even though the case was on record assigned to Judge Kanne in the district court right up to the day the district court rendered the judgment denying the transfer of venue and imposed the fines and sanctions against Hapaniewski and Janski, to wit, April 18, 1988. There was no way for Hapaniewski or Janski to know that Judge Kanne was on the panel for their appeal in the Seventh Circuit until after the Court of Appeals decision was issued, otherwise they would have objected.

Courts are required to exercise independent judgment and not mechanically adopt findings prepared by others. The timing of the reassignment from Judge Kanne to Judge Lozano on April 18, 1988, coinciding with the Judgment and Opinion entered by the district court on April 18, 1988 by Judge Lozano, raises this question.

Judge Lozano, who signed the Order dated April 18, 1988, did not formally receive this case until April 18, 1988 (along with 558 other cases assigned to him on that date) (see Appendix F, at F2), and the Order has at the end at the place for the date the following,

"ENTER: ~~March~~ April 18, 1988."

This suggests that the Order was prepared in March of 1988, before Judge Lozano was assigned the case. (See Appendix C, at C9.) It is not of record in this case when Judge Lozano was sworn in as district judge.

In addition, the Order of April 18, 1988 recites (correctly) that Hapaniewski's complaint was filed on February 12, 1987 (Appendix C, at C2-C3), but then the Order goes on to use the phrase, ". . . now 11 months after suit was filed . . ." (Appendix C, at C4). Counting off 11 months

from February of 1987 gives the time period of January of 1988, and this means that the Order was being drafted or was drafted in January of 1988, from the drafter's viewpoint, or about 3 months before Judge Lozano was assigned the case.

The appearance of impropriety is unmistakable.

CONCLUSION

For the foregoing reasons, petitioners William Hapaniewski and Edward Janski pray that the writ of certiorari be granted.

Respectfully submitted,

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APPENDICES

APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 88-1960

WILLIAM P. HAPANIEWSKI and EDWARD JANSKI,
Plaintiffs-Appellants,

v.

CITY OF CHICAGO HEIGHTS, a municipal corporation; et al.,
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Indiana, Hammond Division.
No. 87-C-105—**Rudy Lozano,** *Judge.*

SUBMITTED JUNE 28, 1989*—DECIDED AUGUST 25, 1989

Before MANION and KANNE, *Circuit Judges*, and PELL, JR., *Senior Circuit Judge.*

* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." Plaintiff-appellant has filed such a statement and requested oral argument. Upon consideration of that statement, the briefs, and the record, the request for oral argument is denied and the appeal is submitted on the briefs and record.

PELL, JR., *Senior Circuit Judge.* Plaintiffs-appellants William Hapaniewski ("Hapaniewski") and Edward Janski ("Janski") appeal the district court's denial of their motion to transfer venue and extend time to perfect service of process. They also appeal the district court's dismissal of their complaint, entry of sanctions against them pursuant to Fed. R. Civ. P. 11, and denial of their emergency Fed. R. Civ. P. 60(b) motion to reconsider their request to transfer venue and extend time to perfect service.

I.

On April 13, 1981, Hapaniewski filed suit against the City of Chicago Heights ("City") in Illinois state court, claiming violations under state and federal statutory law (42 U.S.C. § 1983) and under the state and federal constitutions.[1] On City's motion, the Illinois trial court dismissed Hapaniewski's claims as time-barred by a two-year statute of limitations. The Illinois Appellate Court affirmed, and a subsequent petition for rehearing and motion for leave to appeal to the Illinois Supreme Court were denied.

On February 12, 1987, Hapaniewski filed a complaint in federal district court reciting the same four counts from the state court action but adding two new counts against the judges in the state trial and appellate courts. Although the complaint recited "Northern District of Illinois—Eastern Division" as its heading, the complaint was actually filed in the "Northern District of Indiana—Hammond Division." (Civil No. 87-C-105). In April of 1987, Hapaniewski filed a petition for a writ of certiorari to the United States Supreme Court. On July 28, 1987, the United States District Court for the Northern District of Indiana—Hammond Division issued a Rule 36(b) Notice which indicated that the

[1] The counts involved alleged demolition and destruction of Hapaniewski's property without due process of law.

complaint would be dismissed unless good cause could be shown why service of process had not been made on the defendants within the required 120-day period. *See* N.D. Ind. Local Rule 36(b).

On August 5, 1987, both Hapaniewski and Janski (who are brothers and attorneys) filed responses in the Northern District of Indiana—Hammond Division, asking for an additional thirty days to perfect service of process. Two weeks later, Janski obtained approval to act as counsel until local counsel could be retained. At the granting of this motion, the court directed that Hapaniewski had until September 16, 1987 to perfect service. On September 14, 1987, however, Hapaniewski filed a motion seeking to have the court transfer venue "in the interest of justice" under 28 U.S.C. § 1406(a), and also requesting an additional thirty-day extension to perfect service of process. On October 5, 1987, while the motion to transfer was pending, the United States Supreme Court vacated the Illinois Appellate Court's judgment which had affirmed the dismissal of Hapaniewski's state court case on statute of limitation grounds. *Hapaniewski v. City of Chicago Heights*, 108 S. Ct. 53 (1987) (remanded in light of *Goodman v. Lukens Steel Company*, 482 U.S. ____, 107 S. Ct. 2617 (1987)).

On April 17, 1988, the United States District Court for the Northern District of Indiana—Hammond Division filed its judgment denying the motion to transfer venue, dismissing the action, and imposing sanctions on both Hapaniewski and Janski. The court denied the motion to transfer venue because it found: (1) the plaintiffs easily could have filed their complaint in an Illinois federal district court; (2) the plaintiffs conceded and the court could not disagree that the court could not assert personal jurisdiction in any way over the defendants; (3) the plaintiffs as attorneys should have known that venue was improperly laid; and (4) this error, surfacing seven months after the initial filing of the complaint and five months after the statute of limitations had run, was not the kind of inno-

cent "mistake" found in *Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 467 (1962). The district court also noted that the defendants would "be greatly prejudiced because the statute of limitations ha[d] run and defendants ha[d] not received notice of the suit . . . ."

The court additionally determined that the suit was "frivolous, vexatious and not warranted by existing law . . . ." The court analyzed the three elements required for application of *res judicata*. *See Torres v. Rebarchak*, 814 F.2d 1219, 1222 (7th Cir. 1987). The court reviewed Illinois case law and concluded that the dismissal by the Illinois state court on statute of limitations grounds "operate[d] as a dismissal on the merits." (citations omitted). The court reasoned that since the prior Illinois state proceeding had preclusively decided all "issues actually litigated" and also "those issues which could have been litigated," and since the state court judgment was a final adjudication of the matter, *res judicata* barred retrial in federal court.

Finally, the district court determined that both Hapaniewski and Janski violated Rule 11 for failing to properly inquire about the legal viability of their claims. The court specifically relied on the "established doctrines of full faith and credit" and *res judicata* in finding a violation of Rule 11 and imposing a $1,500.00 fine on each attorney. The local counsel, Steve H. Tokarski, was not fined because his name did not appear on any document of Hapaniewski's, but was warned by the court to "not take his position lightly . . . ."

II.

Hapaniewski and Janski filed an emergency motion to reconsider the sanctions order and the denial of the motion to transfer venue, and a motion to stay the order pending appeal. The court denied the request, indicating that *res judicata* was a valid reason for imposing sanctions on the appellants despite the fact that the Supreme Court vacated the state court decision. The district court

reasoned that the Supreme Court's action did not affect its decision but noted that pursuing the writ of *certiorari* was the proper method for redressing the state court's decision. The court also cited the appellants' failure to file in the proper forum and failure to allege jurisdiction over the defendants as proper reasons for invoking sanctions. Finally, the district court reviewed its decision to dismiss rather than transfer the case, and determined that that decision would not be disturbed. Hapaniewski and Janski timely appealed the district court's denial of the motion to reconsider pursuant to Fed. R. Civ. P. 60(b), and the prior judgment of the district court.

III.

Hapaniewski and Janski contend that the district court abused its discretion in rejecting their Fed. R. Civ. P. 60(b) emergency motion to vacate the judgment, stay the order imposing sanctions, and reconsider the motion to transfer venue. The standard for reviewing the denial of a Rule 60(b) motion is well-established. We will overturn such a denial only if the district court abused its discretion. *See In re Wildman*, 859 F.2d 553, 557 (7th Cir. 1988) (citing *Browder v. Director, Dep't. of Corrections*, 434 U.S. 257, 263 n.7 (1978); *Mumford v. Bowen*, 814 F.2d 328, 329 (7th Cir. 1986)). This is the same standard that this court applies to review the denial of the motion to transfer venue pursuant to 28 U.S.C. § 1406(a).

Under 28 U.S.C. § 1406(a), a district court may "transfer a case brought in the wrong division or district if" it is "in the interest of justice" to do so. *Saylor v. Dyniewski*, 836 F.2d 341, 345 (7th Cir. 1988). A district court must dismiss such a suit if it denies the transfer. 28 U.S.C. § 1406(a). However, personal jurisdiction over the defendant is not a prerequisite for district courts to utilize the transfer provision in § 1406(a). *Saylor*, 836 F.2d at 345 (citing *Goldlawr, Inc.*, 369 U.S. 463; *Cote v. Wadel*, 796 F.2d 981, 985 (7th Cir. 1986)). Nonetheless, our review on appeal of the district court's judgment not to transfer is limited to whether the district court clearly abused its

discretion. *Saylor*, 836 F.2d at 345 (quoting *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 237 (1981)); *see also Cote*, 796 F.2d at 985.

In the instant case, Hapaniewski and Janski have not demonstrated that the district court clearly abused its discretion. Collectively, the appellants claim first that they meant to file in Illinois federal court, as evidenced by the heading on the complaint itself, and claim that by some mistake, the document was filed in Indiana. We cannot conclude here that the error in filing was the kind envisioned by the United States Supreme Court in *Goldlawr, Inc.*, 369 U.S. at 467. Without even questioning their initial intent, the record reveals that Hapaniewski and Janski pursued the federal court action in Indiana despite the fact that two months remained under the statute of limitations for filing in Illinois federal court and despite the fact that they knew that all the parties were residents of Illinois. Hapaniewski and Janski obtained local counsel and sought extensions to attempt to serve process on the defendants. And as the district court noted, it was not until two days before the deadline for effecting service that Hapaniewski and Janski asked to have the action transferred to an Illinois federal court. These actions by the appellants do not reflect a need for a transfer of venue "in the interest of justice", and hence do not show that the district court abused its discretion.

The appellants also urge this court to conclude that the running of the statute of limitations alone mandates a transfer of venue "in the interest of justice" under § 1406(a), and that therefore the district court clearly abused its discretion. We have never concluded that § 1406(a) required transfer in every case. Moreover, this court specifically held in *Saylor*, 836 F.2d at 345, that a dismissal after the statute of limitations had run did not constitute a clear abuse of discretion by the district court. *See also Brown v. Grimm*, 624 F.2d 58, 59 (7th Cir. 1980). In sum, we conclude that the district court did not exceed its discretion in denying the motion to transfer venue or in denying the motion to reconsider that decision.

Hapaniewski and Janski also contend that the district court improperly imposed Rule 11 sanctions on them, and erred in denying their motion to vacate or stay that order. The appellants argue that the district court impermissibly relied on the vacated Illinois Appellate Court judgment in finding that *res judicata* barred their claims from review in federal court, and that because of *res judicata*, the action was frivolous and therefore sanctionable.

If the district court's order imposing sanctions was the only one before this court, this argument might have merit since that order is couched in terms of *res judicata*. *See Magnus Electronics, Inc. v. La Republica Argentina*, 830 F.2d 1396 (7th Cir. 1987). At the time when the district court imposed the sanctions, the Illinois Appellate Court judgment had already been vacated. Thus, there was no final adjudication in a state court proceeding, and the doctrine of *res judicata* was inapplicable to Hapaniewski's claims. *See also Traverso v. Penn*, 874 F.2d 209 (4th Cir. 1989). However, that does not end the matter of whether the district court properly imposed sanctions.

Rule 11 allows district courts, on motion of a party or *sua sponte*, to impose sanctions on parties or lawyers for signing legal documents which have either been inadequately researched or are not "warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." Fed. R. Civ. P. 11. The precise standard for reviewing appeals of Rule 11 sanctions is unsettled. *See Mars Steel Corp. v. Continental Illinois Nat'l Bank and Trust Co.*, No. 88-1554 (7th Cir. Feb. 16, 1989) (unpublished order) (*en banc* hearing held on June 15, 1989 to determine issue of applicable standard of review).[2] This court has utilized three different standards in reviewing the imposition of sanctions. In *In*

[2] Since this opinion went to press, *Mars Steel Corp.* has issued, and the standard of review is now settled in this circuit. 1989 U.S. App. LEXIS 10760 (7th Cir. July 20, 1989).

re Ronco, 838 F.2d 212, 217 (7th Cir. 1988) (cited by *Lebovitz v. Miller*, 856 F.2d 902, 904 (7th Cir. 1988)), this court held that "the legal determination that sanctions are proper is reviewable only for an abuse of discretion." For this same determination, this court has approved a *de novo* standard of review. *S.A. Auto Lube, Inc. v. Jiffy Lube Intern., Inc.*, 842 F.2d 946, 948 (7th Cir. 1988); *Brown v. Federation of State Medical Boards*, 830 F.2d 1429, 1434 (7th Cir. 1987). Finally, we have dubbed the determination "a judgment call," deserving of a strictly deferential review. *See Federal Deposit Insurance Corp. v. Tefken Const. and Installation Co.*, 847 F.2d 440, 442-43 (7th Cir. 1988); *In the Matter of Central Ice Cream Co.*, 836 F.2d 1068, 1072 (7th Cir. 1987). We need not decide which standard is an appropriate one in this case since under even the most favorable standard toward the appellants, we still conclude that the district court's decision to impose sanctions under Rule 11 was proper.

The district court discussed its decision to impose sanctions in its order denying the Rule 60(b) motion. There, the district court noted that it had relied on the fact that relitigation in federal court was not the proper method for Hapaniewski to test the state court's proceeding. The district court stated that since the final state court judgment had been vacated, and since the Illinois Appellate Court subsequently remanded the action for further proceedings, Hapaniewski was able to have "his day in court" in the forum he originally chose. As well, it was improper for Hapaniewski and Janski, both attorneys, to persist in the federal litigation while the state action was still in progress at the Supreme Court level. Hapaniewski was bound by his decision to litigate in state court. In addition, the facts surrounding the filing of the complaint and Hapaniewski and Janski's subsequent conduct, *i.e.*, failing to effectuate service of process or to dismiss the action when service could not be had, certainly warranted the district court's action.

In sum, we conclude that the district court did not abuse its discretion when it denied the appellants' mo-

tion to reconsider its initial decision to deny transferring venue "in the interest of justice" pursuant to 28 U.S.C. § 1406(a). We also conclude that the district court properly imposed sanctions for Hapaniewski and Janski's persistence in litigating in the plainly improper federal forum.

The judgment of the district court is hereby AFFIRMED.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

JUDGMENT—WITHOUT ORAL ARGUMENT

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

August 25, 1989.

Before

Hon. DANIEL A. MANION, *Circuit Judge*
Hon. MICHAEL A. KANNE, *Circuit Judge*
Hon. WILBUR F. PELL, JR., *Circuit Judge*

WILLIAM P. HAPANIEWSKI and
EDWARD JANSKI,

Plaintiffs-Appellants,

No. 88-1960 vs.

CITY OF CHICAGO HEIGHTS, a
municipal corporation; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Indiana, Hammond Division.
No. 87 C-105—**Rudy Lozano,** *Judge.*

This cause came before the Court for decision on the record from the United States District Court for the Northern District of Indiana, Hammond Division.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this date.

APPENDIX B

[Filed May 18, 1988]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

WILLIAM HAPANIEWSKI,

Plaintiff,

vs.

CITY OF CHICAGO HEIGHTS, a municipal corporation; THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS; DUFF, BRYAN B., As Judge and Individually; THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, FIFTH DIVISION; MEJDA, JAMES A., as Judge and Individually; SULLIVAN, John J., as Judge and Individually; PINSHAM, Eugine R., as Judge and Individually; and MURRY, JAMES C., as Judge and Individually,

Defendants.

Civil No. H87-105

ORDER

This matter is before the Court on Consolidated Emergency Motions: To Vacate Order, Judgment, and Fines; To Reconsider Motion To Transfer Venue And To Extend Time To Perfect Service Of Process; and, In The Alternative, Motion For Application For A Stay Of Order, Judgment, and Fines, Pending Appeal filed by the plain-

tiff, William Hapaniewski, and Attorney Edward Janski on May 18, 1988. For the reasons set forth below, the Motion To Vacate Order, Judgment, and Fines, is hereby DENIED; the Motion To Reconsider Motion to Transfer Venue is hereby DENIED; and the Application For Stay of Order, Judgment, and Fines, Pending Appeal, is also DENIED.

BACKGROUND

On April 18, 1988 this Court, by Order, denied Hapaniewski's Motion to Transfer Venue and Extend Time to Perfect Service and Dismissed the Action. Further, the Court imposed a Fifteen Hundred Dollars ($1500.00) fine for Rule 11 Sanctions on Hapaniewski and a Fifteen Hundred Dollar ($1500.00) fine on Janski as a result of their filing this federal cause of action which the Court characterized as "frivolous, vexatious, and not warranted by warranted by (sic) existed law." (Order at p. 8)

A brief restatement of the facts as set forth in the April 18, 1988 Order reveals the following: On April 13, 1981 the plaintiff, William Hapaniewski (hereafter Hapaniewski), brought suit in Illinois state court against the defendant, The City of Chicago Heights, pursuant to state law and 42 U.S.C. §1983, for the alleged destruction of real property resulting in the violation of his due process rights. On March 13, 1984 the Illinois court granted the City's Motion to Dismiss plaintiff's Complaint, based on a two (2) year Statute of Limitations. On August 23, 1985 the Appellate Court affirmed the trial court's denial of Hapaniewski's cause of action. Hapaniewski exhausted his remedies for review by filing a Petition For Rehearing and a Petition For Leave to Appeal To The Illinois Supreme Court, which were denied. Thereafter, on February 12, 1987 Hapaniewski filed a Complaint in this federal court. Hapaniewski's Complaint consisted of the prior counts which were dismissed as time barred in the state court proceeding. Additionally, Hapaniewski alleged two other

causes of action—one against a trial court judge and the other against the appellate judges—seeking declaratory and injunctive relief from the judges' application of a Statute of Limitations pursuant to 42 U.S.C. §1983.

At the time he filed his Complaint in federal court, Hapaniewski failed to have Summons issued by the Clerk and also failed to perfect service on the defendants in accordance with N.D. Ind. Local Rule 36(b). After he was given an extension of time in which to perfect service of process on the defendants, Hapaniewski filed a Motion to Transfer Venue to the State of Illinois.

Motion to Vacate Order, Judgment, and Fines

Attorneys Hapaniewski and Janski seek to vacate this Court's April 18, 1988 Order pursuant to 60(b)(1)(4)(5) and (6) due to the United States Supreme Court's grant of *cert* on October 5, 1987, whereby the judgment of the Appellate Court of Illinois in *Hapaniewski v. The City of Chicago Heights*, 147 Ill. App. 3d 528, 100 Ill.Dec. 217, 497 N.E.2d 97 (Ill. App. 1st Dist. 1986) was vacated and remanded to the Appellate Court of Illinois for further consideration in light of *Goodman v. Lukins Steel Co.*, 482 U.S. ____, 107 S.Ct. 2617, 96 L.Ed.2d 572 (1987).

Relief pursuant to 60(b) is granted only in "exceptional circumstances" *Metlyn Realty Corp. v. Esmark, Inc.*, 763 F.2d 826, 831 (7th Cir. 1985); *C.K.S. Engineers, Inc. v. White Mountain Gypsum Co.*, 726 F.2d 1202, 1205 (7th Cir. 1984). A party cannot have relief simply "because he is unhappy with a judgment." *Chick Kam Choo v. Exxon Corp.*, 699 F.2d 693, 695 (5th Cir. 1983). If the alleged mistake is one of law, the trial judge may reopen the judgment but "the orderly process of appeal usually is far more appropriate to deal with such errors." *Chick*, 699 F.2d at 699 (Quoting *Avstad v. Mansanto Co.*, 671 F.2d 908, 913 (5th Cir. 1982). Hapaniewski has shown no error by this Court.

This Court imposed fines upon Hapaniewski and Janski for attempting to re-litigate claims in federal court against the City for the same alleged injurious actions that were the subject matter of the dismissed state proceeding. Further, although Hapaniewski sought injunctive and declaratory relief against the judges,[1] his relief from this Court would require it to review the state court decision, something which a federal district court, as a court or original jurisdiction, lacks jurisdiction to do. Pursuant to 29 U.S.C. §1738 and the doctrine of *res judicata*, this Court was bound to give conclusive effect to all matters which were determined or could have been raised in the 42 USC §1983 state court litigation. If Hapaniewski was dissatisfied with his treatment in state court, his proper avenue for relief would have been to appeal or to seek review of the state court decision through the proper appellate channels. A federal district court lacks appellate jurisdiction to review, modify or nullify a final order of a state court. *Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 291, 296, 90 S.Ct. 1739, 1748, 26 L.Ed.2d 234, 246 (1970); *Rooker v. Fidelity & Trust Co.*, 263 U.S. 413, 415, 44 S.Ct. 149, 150, 68 L.Ed.2d 362, 365 (1923); *Link v. LaPorte Superior Court No. 2*, 789 F.2d 554, 563 (7th Cir. 1986); and, *Fair v. Given*, 509 F.Supp. 1086, 1088-89 (N.D. Ind. 1981).

The Supreme Court's granting of *cert* and remand of the case to the Illinois Court of Appeals was the proper appellate procedure for Hapaniewski to pursue. Hapaniewski can now have his day in court to litigate his previously time-barred state law claims. Refiling his case and asserting a claim against the judges in this federal court simply was not the proper appellate procedure. It is for those reasons *inter alia* that the Court imposed Rule 11 Sanctions upon Hapaniewski. The Supreme Court's grant of

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[1] Hapaniewski is also directed to *Pulliam v. Allen*, 466 U.S. 522, 104 S.Ct. 1970, 80 L.Ed.2d 565, 576 and n.17, 18).

cert. in no way effects this Court's April 18, 1988 Order, which imposed Sanctions upon Hapaniewski and Janski for attempting to relitigate their claims in this federal forum instead of pursuing the appropriate appellate procedure.

Further, as case law clearly indicates, when a Rule 11 violation occurs, it is the court's *duty* under these circumstances to impose an appropriate sanction. *Frantz v. U.S. Powerlifting Federation,* (7th Cir. slip op. dated December 31, 1987 at p. 3); *Brown v. Federation of State Medical Boards, et al.,* 830 F.2d 1429, 1433 (7th Cir. 1987); *Food Services, Inc. v. Canteen Corp.,* 823 F.2d 1073, 1082 (7th Cir. 1987); *Shrock v. Altru Nurses Registry,* 810 F.2d 658, 661 (7th Cir. 1987). Additionally, Rule 11 Sanctions were imposed because Hapaniewski and Janski filed their suit in an improper forum, which was obvious from the face of the Complaint, failed to allege a jurisdictional basis over the Illinois defendants in the Indiana forum, failed to have Summons issued for service on the defendants for a period of at least eleven (11) months, and failed to allege a good cause for failure to effectuate service. "Under Rule 11, an attorney risks Sanctions for failing to 'make a reasonable inquiry into both the factual and legal basis for the claim he asserts.' (*Magnus Electronics, Inc. v. LaRepublica Argentina,* 830 F.2d 1396, 1403 (7th Cir. 1987) (citing *Brown v. National Bd. of Medical Examiners,* 800 F.2d 168, 171-2 (7th Cir. 1986).) Since Hapaniewski and Janski have persisted in seeking a transfer of venue of their federal Complaint despite this Court's dismissal of the same in light of relevant precedential case law, the Court is inclined to impose further Sanctions against Janski and Hapaniewski for their insistence of a transfer of venue.

Further, Hapaniewski and Janski have submitted Affidavits in support of their emergency motions setting forth numerous personal excuses regarding their lack of diligence in pursuit of this matter. Attorney Hapaniewski came to chambers two (2) weeks after the Court's April

18, 1988 Order, inquiring as to the Court's procedures on the handling of emergency motions. Yet, Attorneys Hapaniewski and Janski failed to file any motion or memorandum in support until the day before the time for filing an appeal of the April 18th Order. It is also evidence that Hapaniewski and Janski knew of the grant of *cert* as early as October, 1987, yet they failed to take remedial acts to avoid their problems by simply dismissing this action. In addition to asking this Court to vacate its April 18, 1988 Order and imposition of fines, plaintiff requests a reconsideration of its Motion to Transfer or a Stay of Order, Judgment and Fines Pending Appeal.

Motion to Reconsider The Denial of The Motion to Transfer Venue.

Hapaniewski insists, despite the Court's well-reasoned Order of April 18, 1988, that his Complaint which restated the dismissed cause of action in the state court and sought review of the trial court and appellate court judges' application of the Statute of Limitations should be transferred to Illinois, where venue is proper. Hapaniewski further insists that his Complaint should have not been dismissed, but instead should have been transferred in the interest of justice in accordance with *Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 82 S.Ct. 913 (1962) and *Burnett v. N.Y.C. R.R. Co.*, 380 U.S. 430, 85 S.Ct. 1050 (1965).

However, Hapaniewski has ignored the reasoning of this Court and the precedent which exists in the Seventh Circuit regarding a transfer versus a dismissal pursuant to 1406(a). In its Order of April 18, 1988, the Court distinguished the *Goldlawr* case and found that rather "the improper filing in Indiana, the failure to effectuate service at least seven (7) months after commencing suit, waiting until after the time the Statute of Limitations had run, and then seeking transfer and extension of time to effectuate service in a proper venue, now eleven (11) months after suit was filed, is more like the 'elementary mistake'

in *Saylor v. Duyniewski*, 836 F.2d 341, 345 (7th Cir. 1988); *Cote v. Wadel*, 796 F.2d 981, 984-85 (7th Cir. 1986); and, *Brown v. Grimm*, 624 F.2d 58, 59 (7th Cir. 1980). (Order at pp. 3-4) In the present case, Hapaniewski alleged in his Complaint that venue as to the defendants is proper in this district, pursuant to 1391(b). (Complaint, ¶2) Yet plaintiff alleged that the jurisdictional basis for each of the defendants was the State of Illinois. (Complaint, ¶¶4-6) As attorneys, Hapaniewski and Janski both should have known that venue, pursuant to 28 U.S.C. §1391(b) was improper when the suit was filed, contrary to their assertion that it was proper. The claim did not arise in Indiana, nor do any of the defendants reside in the State of Indiana. As the Court stated, "Plaintiff's revelation on September 14, 1987 that venue was improper because the defendants all reside in Illinois and the action arose in Illinois does not appear to parallel the type of 'mistake' contemplated by the Court in *Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 467, 82 S.Ct. 913, 916,-8 L.Ed.2d 39, 42 (1962)." Precedent in the Seventh Circuit clearly indicates that in this situation, as in *Saylor*, *Cote*, and *Brown*, Hapaniewski's Complaint should be dismissed and not transferred. Hapaniewski has failed to address or distinguish these Seventh Circuit decisions in its emergency Motion For Reconsideration of Motion to Transfer Venue.

Therefore, the Court DENIES the Motion to Reconsider The Denial Of Hapaniewski's Motion to Transfer Venue and Extend Time to Perfect Service of Process.

Hapaniewski and Janski have failed to show support for their Motion For Stay of the Order, Judgment and Fines. Instead, they have persisted by their actions which the Court originally found to be frivolous, vexatious and not warranted by existing law, and which resulted in the imposition of sanctions against them. Therefore, in light of the April 18, 1988 Order, and the reasoning above, the Motion for Application For a Stay will be DENIED.

Based on the foregoing, Hapaniewski and Janski's Consolidated Emergency Motions to Vacate Order, Judgment

and Fines is hereby DENIED; the Motion to Reconsider Motion to Transfer Venue is hereby DENIED; and the Motion For Stay is also DENIED. Hapaniewski and Janski are directed to submit their Fifteen Hundred Dollar ($1500.00) sums each to the Clerk of this Court in accordance with the April 18, 1988 Order or be prepared to show cause why they should not be held in contempt.

ENTER: 5/18/88

/s/ RUDY LOZANO
RUDY LOZANO, Judge
U.S. District Court

APPENDIX C

[FILED APRIL 18, 1988]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

WILLIAM HAPANIEWSKI,

Plaintiff,

v.

CITY OF CHICAGO HEIGHTS, a Municipal Corporation, et al.,

Defendant.

Civil No. H 87-105

ORDER

This matter is before the court on a Motion to Transfer Venue and to Extend Time to Perfect Service of Process, filed by the plaintiff, William Hapaniewski, on September 14, 1987. For the reasons set forth below, the Motion to Transfer Venue and Extend Time to Perfect Service is DENIED and the action is hereby DISMISSED.

Background

On April 13, 1981, the plaintiff, William P. Hapaniewski (hereafter Hapaniewski) brought suit in Illinois State Court against the defendant, City of Chicago Heights, pur-

suant to state law and 42 U.S.C. §1983 for the alleged destruction of real property resulting in a violation of his due process rights under the State and United States Constitution. After the defendant, City of Chicago Heights (hereafter City) filed a Motion to Dismiss, Hapaniewski filed a Second Amended Complaint. Finally, on March 13, 1984, the Illinois court granted the City's Motion to Dismiss all counts of plaintiff's complaint based on a two-year statute of limitations. Subsequently on August 23, 1985, the Appellate Court affirmed the trial court's dismissal of Hapaniewski's action. Hapaniewski's Petition for Rehearing and Petition for Leave to Appeal to the Illinois Supreme Court were also denied.

However, on February 12, 1987, Hapaniewski filed a complaint in this federal court. The first cause of action appears to be the same four counts that Hapaniewski alleged in his prior state court proceeding which were dismissed by the court as time barred. Additionally, Hapaniewski alleges two other causes of action, one against the trial court judge and the other against the appellate judges. Hapaniewski is seeking damages from the City and declaratory and injunctive relief from the judges pursuant to state law and 42 U.S.C. §1983 for the alleged deprivation of his constitutional rights. Hapaniewski specifically alleges that the demolition of his building, which was the subject of his prior Illinois state court proceeding, and the defendant Circuit Judge's application of a two-year statute of limitations in the prior proceeding along with the Appellate Court Judges' affirmance of the statute's application, violated his Fifth and Fourteenth Amendment rights.

When the federal complaint was filed, no summonses were issued by the Clerk. Thereafter, plaintiff, in response to a Local Rule 36(b) Dismissal Notice sought an additional 30 days in which to perfect service. However, service of process was not perfected on the defendants in accordance with N.D. Ind. Local Rule 36(b) and plaintiff was given an extension of time by Order dated August 14, 1987, to perfect service of process on or before Sep-

tember 16, 1987. Instead, on September 14, 1987, plaintiff filed the present motion stating venue was improper in this court and requesting a transfer of venue and an additional 30 days in which to perfect service. Hapaniewski has informed the court that he will be greatly prejudiced if the case is not transferred in that the statute of limitations ran on this action on April 17, 1987.

Discussion

Plaintiff concedes that venue in this court is improper because the defendants are either residents or an entity of Illinois and that the claim arose out of litigation that was before the Illinois State Court. Therefore, plaintiff seeks to transfer the case pursuant to 28 U.S.C. §1406(a) which provides:

> The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

In accordance with federal question jurisdiction, 28 U.S.C. §1331, venue is proper where all defendants reside or where the claim arose. 28 U.S.C. §1391(b). In fact, plaintiff alleged in his complaint filed in February, 1987, that "venue as to the defendants is proper in this district pursuant to 1391(b)." (Complaint, ¶ 2) Further, plaintiff alleged the jurisdictional basis for each of the defendants, the City of Chicago Heights and the Circuit and Appellate Court Judges as the State of Illinois. (Complaint, ¶¶ 4-6) Clearly none of the defendants are residents of Indiana, nor does the claim arising out of the Illinois litigation have any connection with the State of Indiana. Even plaintiff at the time the action was commenced was a resident of Illinois. He could have easily filed the action in Illinois.

Accordingly, from the face of the complaint, attorney Hapaniewski, a member of the State Bar of Indiana since May, 1980 and his attorney, Edward Janski, a member of the Illinois Bar since May, 1978, both should have

known that venue pursuant to 28 U.S.C. §1391(b) was improper when the suit was filed, contrary to their assertion it was proper. Plaintiff's revelation on September 14, 1987, that venue was improper because the defendants all reside in Illinois and the action arose in Illinois does not appear to parallel the type of "mistake" contemplated by the court in *Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 467, 82 S.Ct. 913, 916, 8 L.Ed.2d 39, 42 (1962). Rather, the improper filing in Indiana, the failure to effectuate service at least seven months after commencing suit, waiting until after the time the statute of limitations had run, and then seeking transfer and an extension of time to effectuate service in a proper venue, now 11 months after suit was filed, is more like the "elementary mistake" in *Saylor v. Dyniewski*, 836 F.2d 341, 345 (7th Cir. 1988); *Cote v. Wadel*, 796 F.2d 981, 984-85 (7th Cir. 1986); and *Brown v. Grimm*, 624 F.2d 58, 59 (7th Cir. 1980).

In *Cote*, the plaintiff brought suit in Wisconsin against Michigan defendants and the court dismissed plaintiff's action rather than transferring it. The plaintiff had filed suit in a proper venue but the court had no basis for asserting personal jurisdiction over the defendants. After the statute of limitations ran, plaintiff sought to transfer venue. In support of its dismissal the court stated:

> But the mistake was elementary. Elementary prudence would have indicated to her lawyer that he must file a protective suit in Michigan because there was only a slight possibility of obtaining jurisdiction in Wisconsin over the defendants. . . We adhere to *Brown* and remind plaintiffs and their counsel that they must determine where the plaintiff can get personal jurisdiction over the defendant before, not after, the statute of limitations runs; otherwise they court disaster.
>
> 769 F.2d at 985.

Plaintiff cannot merely assert that defendants will not be prejudiced if their motion to transfer is granted in that defendants will be greatly prejudiced because the statute of limitations has run and defendants have not received

notice of the suit commensurate with the time period for filing the complaint. Plaintiff's improper "mistaken" venue and possible attempt to usurp the statute of limitations cannot be tolerated. Therefore, in the interest of justice, the case will not be transferred but dismissed. Not only has the plaintiff failed to effectuate service of the summons and complaint on the defendants within the applicable time after filing the complaint, but the plaintiff asserts no possible basis for this court's assertion of personal jurisdiction over the defendants. 28 U.S.C. §1406(a); Fed. R.Civ. Pro. 4(d), 4(j); N.D. Ind. Local Rule 36(b); *Saylor*, 836 F.2d at 345; *Ordower v. Feldman*, 826 F.2d 1569, 1571 (7th Cir. 1987); *Cote*, 796 F.2d at 984-85; and *Brown*, 624 F.2d at 59. Further, after review of Hapaniewski's complaint, it is apparent that Hapaniewski's federal complaint is best categorized as frivolous, vexatious and not warranted by existing law. Plaintiff's first cause of action in his federal suit is against the City of Chicago Heights for violations of his state and federal constitutional rights. This same action, instituted in state court in 1981, was found to be time barred by the statute of limitations and subsequently dismissed by the court. Plaintiff is now attempting to re-litigate his claim in federal court against the city for the same alleged injurious actions that was the subject matter of the state proceeding. Therefore, the well established doctrines of full faith and credit and res judicata would bar Hapaniewski's retrial of this issue.

It is well settled that a state court judgment is entitled to the same preclusive effect in a federal court as it would have in the state court rendering it. 29 U.S.C. §1738; *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518, 519, 106 S.Ct. 768, 769-70, 88 L.Ed.2d 877, 880-81 (1986); *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 380, 105 S.Ct. 1327, 1332, 84 L.Ed.2d 274, 281 (1985) *reh. den.*, 471 U.S. 1062, 105 S.Ct. 2127, 85 L.Ed.2d 491 (1985); *Migra v. Warren City School District Board of Education*, 465 U.S. 75, 81, 104 S.Ct. 892, 896, 79 L.Ed.2d 56, 61-2 (1984); *Pliska v. City of Stevens Point, Wisconsin*, 823 F.2d 1168, 1172 (7th Cir. 1987); *Leal v. Krajewski*, 803 F.2d 332, 334 (7th Cir. 1986); *Morris v.*

Spratt, 768 F.2d 879, 883 (7th Cir. 1985); *Jones v. City of Alton, Illinois*, 757 F.2d 878, 883 (7th Cir. 1985); and *Vandenplas v. City of Muskego*, 753 F.2d 555, 559 (7th Cir. 1985), *cert. denied*, 472 U.S. 3481, 105 S.Ct. 3481, 87 L.Ed.2d 616 (1985). This rule applies in §1983 suits not only to issues actually litigated but also to those issues which could have been litigated in the state court proceeding. *Migra*, 465 U.S. at 83-85, 104 S.Ct. at 897, 79 L.Ed.2d at 63-4; *Pliska*, 823 F.2d at 1172; *Torres v. Rebarchak*, 814 F.2d 1219, 1222 (7th Cir. 1987); *Leal*, 803 F.2d at 334; *Jones*, 757 F.2d at 883; *Vandenplas*, 753 F.2d at 559; and *Williams v. Duckworth*, 617 F.Supp. 597, 599 (N.D. Ind. 1985). Under 29 U.S.C. §1738, this court must look to the law of Illinois to determine the preclusive effect of the Illinois state court judgment. *See generally Parsons*, 474 U.S. at 524, 106 S.Ct. at 772, 88 L.Ed.2d at 884; *Pliska*, 823 F.2d at 1172; *Jones*, 757 F.2d at 884; and *Vandenplas*, 753 F.2d at 559.

Under Illinois law, a final judgment is conclusive as to all matters which were determined or could have been raised and litigated. *Torres*, 814 F.2d at 1222; and *Yaw v. Beeghly*, 440 N.E.2d 1066, 1069 (Ill. App. 1982). A party is precluded from relitigating issues in a subsequent proceeding when there is:

(1) an identity of parties or their privies in the two suits;

(2) an identity of causes of action in the earlier and later suit; and

(3) a final judgment on the merits in the earlier suit.

Torres, 814 F.2d at 1222.

See also *Secretary of Labor v. Fitzsimmons*, 805 F.2d 682, 688 (7th Cir. 1986); *Cannon v. Loyola University of Chicago*, 784 F.2d 777, 780-81 (7th Cir. 1986); and *Lee v. City of Peoria*, 685 F.2d 196, 199 (7th Cir. 1982).

Therefore, the first two elements of res judicata have been met, since there is an identity of parties and causes of action. As to the last element, Illinois courts have held that a dismissal for failure to comply with the statute of

limitations operates as a dismissal on the merits. *American National Bank & Trust Co. v. City of Chicago*, 826 F.2d 1547, 1533 (7th Cir. 1987); *Cannon*, 784 F.2d at 781; *Sankey Brothers, Inc. v. Guilliams*, 504 N.E.2d 534, 538 (Ill. App. 1987); and *Muscare v. Voltz*, 438 N.E.2d 626, 627 (Ill. App. 1982). As the court stated in *American National Bank*, 826 F.2d 1547:

> When the first suit is dismissed under a statute of limitations, that is the end . . . A dismissal under the statute of limitations means: "You came too late, and you did not offer a sufficient reason to excuse the delay." . . . the disposition is meant to be conclusive. It does not invite refiling at another time or in another court.
>
> 826 F.2d at 1553.

Since all the elements of res judicata have been met, the plaintiff is barred from re-litigating his suit in federal court. Further, Hapaniewski's second and third causes of action against the judges must also be barred. To do what Hapaniewski now requests would require this court to review the state court decision. A federal district court, as a court of original jurisdiction, lacks appellate jurisdiction to review, modify or nullify a final order of a state court. *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 296, 90 S.Ct. 1739, 1748, 28 L.Ed.2d 234, 246 (1970); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415, 44 S.Ct. 149, 150, 68 L.Ed.2d 362, 365 (1923); *Lynk v. LaPorte Superior Court No. 2*, 789 F.2d 554, 563 (7th Cir. 1986) (a party who fails to raise his federal question in the state court proceeding will be prevented by res judicata from seeking judicial review in a federal court); and *Fair v. Given*, 509 F.Supp. 1086, 1088-89 (N.D. Ill. 1981).

Further, both Hapaniewski and Janski as members of their respective bar associations and admitted to practice before their respective State Supreme Courts, Janski since May, 1978 and Hapaniewski since May, 1980, should be aware of Fed.R.Civ.Pro. 11, which states:

> . . . [t]he signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law . . . and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction . . .

"The standard for imposing sanctions under Rule 11 is one of objective reasonableness under the circumstances. (citation omitted). 'Under Rule 11 an attorney risks sanctions for failing to make a reasonable inquiry into both the factual and legal basis for the claim he asserts.' " *Magnus Electronics, Inc. v. La Republica Argentina*, 830 F.2d 1396, 1403 (7th Cir. 1987) (citing *Brown v. National Bd. of Medical Examiners*, 800 F.2d 168, 171-2 (7th Cir. 1986). Not only did Hapaniewski and Janski file their suit in an improper forum, which was obvious from the face of the complaint, but both failed to allege a jurisdictional basis over the Illinois defendants in the Indiana forum. Further, Hapaniewski and Janski did not have summons' issued for service on the defendants, but waited until after the statute of limitations had run to bring a 1406(a) motion to transfer venue. Plaintiff has failed to allege good cause for failure to effectuate service. As to their claims, Counts I, II, III are best characterized as frivolous, vexatious, and not warranted by existing law. Hapaniewski and Janski failed to make a reasonable inquiry into the legal basis of their claims because clearly all three claims are barred under the well established doctrines of full faith and credit and res judicata. *See also Brown*, ____ F.2d at ____ (slip at 12-13). It is therefore this court's duty under these circumstances to impose an appropriate sanction for the Rule 11 violation. *See Frantz v. U.S.*

Powerlifting Federation, (7th Cir. slip op. dated December 31, 1987 at p. 3); *Brown v. Federation of State Medical Boards, et al.*, 830 F.2d 1429, 1433 (7th Cir. 1987); *Food Services, Inc. v. Canteen Corp.*, 823 F.2d 1073, 1082 (7th Cir. 1987); *Shrock v. Altru Nurses Registry*, 810 F.2d 658, 661 (7th Cir. 1987). The Seventh Circuit has held that a fine is an appropriate sanction for a Rule 11 violation. *Ordower*, 826 F.2d at 1576; *Cheek v. Doe*, 828 F.2d 395, 397 (7th Cir. 1987); and *Glick v. Gutbrod*, 782 F.2d 754, 756 n.3 (7th Cir. 1986). Therefore, Attorney Hapaniewski and Attorney Janski are each hereby FINED $1,500.00. Although plaintiff's co-counsel and local counsel in this matter, Steve H. Tokarski, entered his appearance in this matter on August 31, 1987, his signature does not appear on any of plaintiff's documents. However, when a local attorney agrees to appear for counsel not admitted in this court, he should seek to assist outside counsel in the rules, procedures and practices observed in this federal court. Further, local counsel should be aware of any and all matters filed in the action. Tokarski should also be familiar with Fed.R.Civ.Pro. 11 and the ramifications for violations of Rule 11. Any attorney serving as local counsel should not take his position lightly and should appreciate his duty to other counsel and this court before deciding to take on a matter such as this one which is frivolous and not warranted by existing law.

Based on the foregoing, the Motion for Transfer of Venue and an Extension of Time to Perfect Service is DENIED and the action is DISMISSED. Attorneys Hapaniewski and Janski are each ORDERED to remit $1,500.00 to the Clerk of this court within thirty (30) days of receipt of this Order.

ENTER: April ~~March~~ 18, 1988

/s/ Rudy Lozano
Judge
United States District Court

C10

[FILED APRIL 20, 1988]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

JUDGMENT IN A CIVIL CASE

HAPANIEWSKI, WILLIAM P.

v. Case Number: H87-105

CITY OF CHICAGO HEIGHTS, et al.

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT THE MOTION FOR TRANSFER OF VENUE AND AN EXTENSION OF TIME TO PERFECT SERVICE FILED BY THE PLAINTIFF IS DENIED AND THE ACTION IS DISMISSED. ATTORNEYS HAPANIEWSKI AND JANSKI ARE EACH ORDERED TO REMIT $1,500.00 TO THE CLERK OF THIS COURT WITHIN THIRTY DAYS OF RECEIPT OF THIS ORDER.

Date APRIL 20, 1988

RICHARD E. TIMMONS
Clerk

/s/ SUZANNE D. ALCALA
(By) Deputy Clerk

APPENDIX D

UNITED STATES OF AMERICA, SS:
THE PRESIDENT OF THE
UNITED STATES OF AMERICA

To the Honorable Judges of
the Appellate Court of
Illinois, First District.

GREETINGS:

WHEREAS, lately in the Appellate Court of Illinois, First District, there came before you a cause between Wm. Hapaniewski, Plaintiff-Appellant, and City of Chicago Heights, Defendant-Appellee, No. 84-0902, wherein the judgment of the said Appellate Court was duly entered on the twenty-third day of August, 1985, as appears by an inspection of the petition for a writ of certiorari and response thereto.

AND WHEREAS, in the 1987 Term, the said cause having been submitted to the SUPREME COURT OF THE UNITED STATES on the said petition for a writ of certiorari and response thereto, and the Court having granted the said petition,

ON CONSIDERATION WHEREOF, it was ordered and adjudged on October 5, 1987, by this Court that the judgment of the said Appellate Court in this cause was vacated with costs, and that this cause was remanded to the Appellate Court of Illinois, First District, for further consideration in light of *Goodman v. Lukens Steel Company*, 482 U.S. ____ (1987).

IT IS FURTHER ORDERED that the petitioner, William Hapaniewski, recover from City of Chicago Heights Two Hundred Dollars ($200.00) for his costs herein expended.

NOW, THEREFORE, THE CAUSE IS REMANDED to you in order that such proceedings may be had in the said cause, in conformity with the judgment of this Court above stated, as accord with right and justice, and the Constitution and Laws of the United States.

Witness the Honorable WILLIAM H. REHNQUIST, Chief Justice of the United States, the -------5th-------day of------- November-------in the year of our Lord one thousand nine hundred and eighty-seven.

Costs of William Hapaniewski

Clerk's costs: $200.00

/s/ _____
Clerk of the Supreme Court of the United States

No. 86-1851

William Hapaniewski
v.
City of Chicago Heights

William HAPANIEWSKI, petitioner, v.
CITY OF CHICAGO HEIGHTS.

No. 86-1851.

Case below, 147 Ill.App.3d 528, 100 Ill.Dec. 217, 497 N.E.2d 97.

Oct. 5, 1987. On petition for writ of certiorari to the Appellate Court of Illinois, First District. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the Appellate Court of Illinois, First District, for further consideration in light of *Goodman v. Lukens Steel Company*, 482 U.S. ____, 107 S.Ct. 2617, 96 L.Ed.2d 572 (1987).

APPENDIX E

169 Ill.App.3d 945
120 Ill.Dec. 584
524 N.E.2d 614
(1st Dist. 1988)
William HAPENIEWSKI (sic),
Plaintiff-Appellant,

v.

The CITY OF CHICAGO HEIGHTS, a municipal corporation,
Defendant-Appellee.

No. 84-0902.

Appellate Court of Illinois,
First District, Fifth Division.

May 6, 1988.

Building owner brought action against city for wrongful demolition. The Circuit Court, Cook County, Brian B. Duff, J., dismissed complaint for failure to bring action within two-year limitations period. The Appellate Court, 147 Ill. App.3d 528, 100 Ill.Dec. 217, 497 N.E.2d 97, affirmed. Building owner's petition for leave to appeal was denied by the Illinois Supreme Court, after which he sought and was granted writ of certiorari by the United States Supreme Court. The Supreme Court, 108 S.Ct. 53, vacated and remanded. On remand, the Appellate Court, Murray, J., held that five-year residual statute of limitations, rather than two-year statute contained in Tort Immunity Act, applied to building owner's civil rights action.

Vacated and remanded.

Civil Rights

Five-year residual statute of limitations applicable to actions for damages for injury to property, rather than two-year statute contained in Tort Immunity Act, applied to building owner's civil rights action against city for demolition of building; there was clear precedent in Illinois establishing five-year statute of limitations for civil rights actions, upon which building owner could reasonably rely. 42 U.S.C.A. § 1983; S.H.A. ch. 85, ¶ 8-101; ch. 110, ¶ 13-205.

William Hapaniewski, Merrillville, Ind., pro se.

Justice MURRAY delivered the opinion of the court:

This cause comes before this court on the mandate of the United States Supreme Court issued on October 5, 1987 in the case of *Hapeniewski v. City of Chicago Heights* (1987), ____ U.S. ____, 108 S.Ct. 53, 98 L.Ed.2d 17. In an earlier opinion, this court affirmed an order of the circuit court of Cook County dismissing the cause. (*Hapeniewski v. City of Chicago Heights* (1985), 147 Ill.App.3d 528, 100 Ill.Dec. 217, 497 N.E.2d 97.)

This cause arose from the demolition of a building, owned by plaintiff William Hapeniewski, by defendant City of Chicago Heights (city) in July 1977. The demolition order was later held void and illegal. In 1981, plaintiff filed a five-count complaint for damages alleging, among other things, that his building was demolished without due process and in violation of section 1983 of the Federal Civil Rights Act (42 U.S.C. sec. 1983 (1981).) On March 13, 1984, the trial court granted the city's motion to dismiss the complaint on the grounds that the two-year statute of limitations contained in the Illinois Tort Immunity Act was applicable. (Ill.Rev.Stat.1983, ch. 85, par. 8-101.) Plaintiff had contended that the appropriate limitations period was five years as provided in section 13-205 of the Illinois Code of Civil Procedure; section 13-205 is a residual statute of limitations that covers, in part, actions

to recover damages for an injury done to property and also, all civil actions not otherwise provided for. Ill.Rev. Stat.1983, ch. 110, par. 13-205, replacing Ill.Rev.Stat.1981, ch. 83, par. 16.

The trial court's dismissal was affirmed by this appellate court. Plaintiff's petition for leave to appeal was denied by the Illinois Supreme Court after which he sought and was granted a writ of certiorari by the United States Supreme Court. In a summary decision in October 1987, the Supreme Court vacated this court's judgment and remanded the cause for further consideration in light of its decision in *Goodman v. Lukens Steel Co.* (1987), ____ U.S. ____, 107 S.Ct. 2617, 96 L.Ed.2d 572. The city was also ordered to pay to plaintiff filing costs for the writ of certiorari. As of this date, the city has not yet paid the costs.

We reject the city's contention that our earlier decision was in accordance with *Goodman* and, upon reconsideration, vacate our previous judgment.

The Federal Civil Rights Act contains no statute of limitations. In *Wilson v. Garcia* (1985), 471 U.S. 261, 105 S.Ct. 1938, 85 L.Ed.2d 254, the Supreme Court held that Federal courts must apply the most appropriate or analogous state statute of limitations for personal injury actions to all section 1983 claims. In *Goodman v. Lukens Steel Co.* (1987), ____ U.S. ____, 107 S.Ct. 2617, 96 L.Ed.2d 572, the Court determined the scope of the *Wilson* holding. It noted that although it is the general rule that Federal cases should be decided according to the law existing at the time of decision, nonretroactivity as to statutes of limitation is proper in certain circumstances. One such circumstance occurs when a decision overrules clear precedent on which the complainant was entitled to rely. The *Goodman* court applied the *Wilson* rule retroactively, holding that the timeliness of the plaintiffs' claims should be determined by application of Pennsylvania's two-year statute of limitations governing personal injuries. It based this decision on the fact that there was no clear precedent in Pennsylvania regarding which limitations period to use

and upon which plaintiffs could have relied when they filed their suit in 1973. See also *Chevron Oil Co. v. Huson* (1971), 404 U.S. 97, 92 S.Ct. 349, 30 L.Ed.2d 296 (three-part test to determine retroactivity).

However, in Illinois, unlike Pennsylvania, all section 1983 cases had been subject to a five-year statute of limitations before the *Wilson* decision. See *Beard v. Robinson* (7th Cir.1977), 563 F.2d 331, *cert. denied* (1978), 438 U.S. 907, 98 S.Ct. 3125, 57 L.Ed.2d 1149 (claims under Civil Rights Act are not common law torts and are governed by the Illinois five-year statute of limitations applicable to all causes of action that do not contain their own limitations period); See also *Rovenhagen v. Webber* (1986), 143 Ill.App.3d 954, 97 Ill.Dec. 927, 493 N.E.2d 734.

Therefore, it is apparent that there was clear precedent in Illinois establishing a five-year statute of limitation for civil rights actions and upon which plaintiff could reasonably rely.

Accordingly, based on the *Goodman* analysis, we vacate our 1985 order and remand this cause to the trial court with directions to apply the section 13-205 statute of limitations (Ill.Rev.Stat.1983, ch. 110, par. 13-205) to the count asserting a civil rights violation and, further, if payment has not been made to enter judgment against the city as to the costs assessed it by the Supreme Court.

VACATED and REMANDED.

SULLIVAN and PINCHAM, JJ., concur.

APPENDIX F

RUDY LOZANO, J.

HAMMOND CIVIL NO. H 87-105

1. HAPANIEWSKI, William P. v. 1. CITY OF CHICAGO HEIGHTS, a municipal corporation;
   2. THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS;
   3. DUFF, Brian B., as Judge and Individually;
   4. THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT–FIFTH DIVISION;
   5. MEJDA, James J., as Judge and Individually;
   6. SULLIVAN, John J., as Judge and Individually;
   7. PINCHAM, Eugine R., as Judge and Individually; and
   8. MURRY, James C., as Judge and Individually

~~**MICHAEL KANNE, J.**~~

William P. Hapaniewski
100 E. 80th Pl.
Merrillville, IN 46410
769-3688

Edward Janski
188 W. Randolph St.
Suite 1226
Chicago, IL
750-1500

Co-Cnsl for Pltf:
Steve H. Tokarski
7803 W. 75th Ave., Suite 1
Schererville, IN 46375
219/322-1271

F2

[Filed April 18, 1988]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

H 87-105

GENERAL ORDER

Pursuant to 28 U.S.C. §137, and for reason of efficient administration of the docket, the following civil actions are now assigned to the Honorable Rudy Lozano, judge of this court:

	Civil Number	*Caption*
1.	H78-9	Macon v. Califano (RE-OP)
		* * *
215.	H87-105	Hapaniewski v. City of Chicago Heights
		* * *
559.	H88-179	Jagiela v. St. Mary Med. Ctr.

The Clerk's Office shall amend the docket sheets and take such further steps as are necessary to carry out the intent of this Order. Previously, entered Orders and deadlines shall remain in effect in these cases.

ENTER: 4/15/88

/s/ ALLEN SHARP
ALLEN SHARP, Chief Judge,
U.S. District Court

APPENDIX G

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED IN THIS CASE

1.

Full Faith and Credit Clause, United States Constitution, Article IV, Section 1:

ARTICLE IV

§ 1. Full faith and credit among states

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

2.

Due Process Clause of the Fifth Amendment to the United States Constitution:

AMENDMENT [V.]

Capital crimes; double jeopardy; self-incrimination; due process; just compensation for property

No person shall . . . be deprived of life, liberty, or property, without due process of law; . . . .

3.

28 U.S.C. § 1406(a), which deals with transfer of venue:

The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

4.

The Full Faith and Credit Act, 28 U.S.C. § 1738:

§ 1738. State and Territorial statutes and judicial proceedings; full faith and credit

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

5.

Rule 11 of the Federal Rules of Civil Procedure for the United States District Courts:

RULE 11. Signing of Pleadings, Motions, and Other Papers; Sanctions

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be

verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.